Filed 1/6/09 In re I.L. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re I.L., a Person Coming Under the Juvenile Court Law.	B206932
THE PEOPLE, Plaintiff and Respondent, v. I.L., Defendant and Appellant.	(Los Angeles County Super. Ct. No. PJ38240)

APPEAL from an order of the Los Angeles Superior Court. Mark Frazin, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Appellant

Edmund G. Brown, Jr., Attorney General, Dan R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon, and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

We affirm an order of the juvenile court, finding no abuse of discretion in the trial court's decision not to reduce I.L.'s felony adjudication of possession of a razor with an unguarded blade on school grounds to a misdemeanor.

FACTS & DISCUSSION

On November 6, 2007, 14-year-old B.F. was in class at Pacific Ridge School when his fellow student, I.L., walked from the back of the room, approached him with a razor blade, and began waiving it in front of him in the air. B.F. put his arm up for protection and was cut in his right forearm by I.L. The cut left a scar of approximately one and one-half inches in length. When B.F. was getting a band-aid, I.L. told him not to be a "whiner." The razor was a small pink plastic one, used to shave eyebrows, which I.L. got from a girl in the classroom. The smaller blade portion of the razor was about a quarter inch thick.

A teacher's assistant who saw the incident said I.L. picked up the razor from a table outside the classroom while a girl was cleaning out her purse about five minutes earlier.

I.L. testified on his own behalf and admitted that he picked up the razor from a female student, played with it, then walked toward B.F. and "just cut him." He said he did not think the razor was sharp enough to cut him and he did not mean to do it.

The petition filed against I.L. alleged three counts: assault with a deadly weapon (Pen. Code, § 245(a)(1)); exhibiting a deadly weapon (Pen. Code, § 417 (a)(1)); and possession of a weapon on school grounds (Pen. Code, § 626.10(a)). At the conclusion of the prosecution's case, count 2 was dismissed pursuant to Welfare and Institutions Code section 701.1. After the adjudication hearing, the court sustained the petition as to count 1, as a misdemeanor, and as to count 3 as a felony.

At the disposition hearing, I.L. was ordered placed in a suitable facility with a maximum period of confinement not to exceed three years. Two other petitions pending against I.L. were dealt with vis a vis a settlement agreement at the same time: a petition alleging I.L. was in possession of etching cream/aerosol paint container with the intent to deface, in violation of Penal Code section 594, subdivision (e)(1) was dismissed and

appellant admitted the allegation that he committed a battery on a school, park or hospital, in violation of Penal Code section 243.2, subdivision (a).

The trial court did not explain its reasons for denying the motion to reduce, but at various times during the adjudication and disposition hearings, made comments about the count. First, the court denied a motion to dismiss count 3, finding that the razor was a weapon. Regarding the actions of I.L., the court said, "at most [he] was intending to nick the minor with it. . . . I think it has been described as horse play, just very foolish horseplay." In denying home placement, the court indicated the probation report "clearly indicates that this is a continuing pattern of the minor, although I don't want to prejudge whether or not the other fight at school that he is responsible for [alleged in the other then-pending petition] it appears from the testimony today he tends to bully all the other kids and that this is a problem [*sic*] of pattern that he has."

On appeal, I.L. contends the trial court abused its discretion by refusing to reduce count 3 to a misdemeanor. The problem, posits I.L., is that the circumstances of the offense did not warrant felony treatment because he did not bring the razor to school, had possession of it for a short period of time, did not intend to strike the victim and only imposed a small wound as a result of an "accident." We disagree.

Our Supreme Court has directed that the decision to reduce a felony to a misdemeanor should be guided by the general objectives of sentencing and " 'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.' [Citations.]" (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978).) Further, that the appellate court's role in reviewing such a claim is deferential: we look to see whether the trial court's decision was irrational or arbitrary. (*Id*. at p. 977.) The trial court's decision " 'will not be reversed merely because reasonable people might disagree. "An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." [Citations.]' " (*Id*. at p. 978.)

The evidence in the record, examined in light of the standard of review we have noted, shows that I.L. had the razor for at least five minutes after taking it from a fellow classmate, and that he displayed it in a dangerous manner. I.L. then walked with the razor in his hand from the back of the classroom to the front where B.F., a student who was often bullied, was seated. He waived the razor in the air very close to B.F.'s body and in doing so, he inflicted a one and one-half inch wound on his forearm. It would be difficult to find an abuse of discretion under these circumstances, and we do not. That the trial court reduced count 1 to a misdemeanor did not mandate the same result in count 3.

DISPOSITION

The order adjudging I.L. a ward of the juvenile court is affirmed.

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BIGELOW, J.

We concur:

COOPER, P.J.

FLIER, J.